

§ 1520.15

49 CFR Ch. XII (10–1–10 Edition)

(d) *Other types of records.* In the case of non-paper records that contain SSI, including motion picture films, videotape recordings, audio recording, and electronic and magnetic records, a covered person must clearly and conspicuously mark the records with the protective marking and the distribution limitation statement such that the viewer or listener is reasonably likely to see or hear them when obtaining access to the contents of the record.

§ 1520.15 SSI disclosed by TSA or the Coast Guard.

(a) *In general.* Except as otherwise provided in this section, and notwithstanding the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and other laws, records containing SSI are not available for public inspection or copying, nor does TSA or the Coast Guard release such records to persons without a need to know.

(b) *Disclosure under the Freedom of Information Act and the Privacy Act.* If a record contains both SSI and information that is not SSI, TSA or the Coast Guard, on a proper Freedom of Information Act or Privacy Act request, may disclose the record with the SSI redacted, provided the record is not otherwise exempt from disclosure under the Freedom of Information Act or Privacy Act.

(c) *Disclosures to committees of Congress and the General Accounting Office.* Nothing in this part precludes TSA or the Coast Guard from disclosing SSI to a committee of Congress authorized to have the information or to the Comptroller General, or to any authorized representative of the Comptroller General.

(d) *Disclosure in enforcement proceedings—(1) In general.* TSA or the Coast Guard may provide SSI to a person in the context of an administrative enforcement proceeding when, in the sole discretion of TSA or the Coast Guard, as appropriate, access to the SSI is necessary for the person to prepare a response to allegations contained in a legal enforcement action document issued by TSA or the Coast Guard.

(2) *Security background check.* Prior to providing SSI to a person under para-

graph (d)(1) of this section, TSA or the Coast Guard may require the individual or, in the case of an entity, the individuals representing the entity, and their counsel, to undergo and satisfy, in the judgment of TSA or the Coast Guard, a security background check.

(e) *Other conditional disclosure.* TSA may authorize a conditional disclosure of specific records or information that constitute SSI upon the written determination by TSA that disclosure of such records or information, subject to such limitations and restrictions as TSA may prescribe, would not be detrimental to transportation security.

(f) *Obligation to protect information.* When an individual receives SSI pursuant to paragraph (d) or (e) of this section that individual becomes a covered person under § 1520.7 and is subject to the obligations of a covered person under this part.

(g) *No release under FOIA.* When TSA discloses SSI pursuant to paragraphs (b) through (e) of this section, TSA makes the disclosure for the sole purpose described in that paragraph. Such disclosure is not a public release of information under the Freedom of Information Act.

(h) *Disclosure of Critical Infrastructure Information.* Disclosure of information that is both SSI and has been designated as critical infrastructure information under section 214 of the Homeland Security Act is governed solely by the requirements of section 214 and any implementing regulations.

§ 1520.17 Consequences of unauthorized disclosure of SSI.

Violation of this part is grounds for a civil penalty and other enforcement or corrective action by DHS, and appropriate personnel actions for Federal employees. Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

§ 1520.19 Destruction of SSI.

(a) *DHS.* Subject to the requirements of the Federal Records Act (5 U.S.C. 105), including the duty to preserve records containing documentation of a Federal agency's policies, decisions,

and essential transactions, DHS destroys SSI when no longer needed to carry out the agency's function.

(b) *Other covered persons*—(1) *In general.* A covered person must destroy SSI completely to preclude recognition or reconstruction of the information when the covered person no longer needs the SSI to carry out transportation security measures.

(2) *Exception.* Paragraph (b)(1) of this section does not require a State or local government agency to destroy information that the agency is required to preserve under State or local law.

PART 1522—TSA-APPROVED VALIDATION FIRMS AND VALIDATORS

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Subpart A—General

§ 1522.1 Scope and terms used in this part.

(a) This part governs the use of TSA-approved validation firms and individual validators to assess whether certain persons regulated under this chapter are in compliance with this chapter.

(b) In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply in this part:

Applicant means a firm that seeks to become a TSA-approved validation firm under this part.

Assessment means the physical inspections, records reviews, personnel interviews, and other procedures conducted by a validator to assess whether a person is in compliance with relevant requirements of a security program.

Conflict of interest means a situation in which the validation firm, the validator, or an individual assisting in the assessment, or the spouse or immediate family member of such person, has a relationship with, or an interest in, the person under assessment that may adversely affect the impartiality of the assessment. Examples of conflict of interest situations include, but are not limited to, any of the following:

(1) The validation firm is a parent company or subsidiary of the person under assessment, has a financial interest in the person under assessment, or has common management or organizational governance (for example, interlocking boards of directors) with the person under assessment.

(2) The validation firm, the validator, or an individual who will assist in conducting the assessment, or an immediate family member of such a validator or individual, is a creditor or debtor of the person under assessment.

(3) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate family member of such a person, is, or within the past two years has been, an employee, officer, or contractor of the person under assessment whose duties did not involve the operations being assessed.

(4) The validator, or an individual who will assist in conducting the assessment, or the spouse or immediate